IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL MISC.NO.33011-M OF 2007

DATE OF DECISION: SEPTEMBER 19, 2007

Nikhil Channa.

.....Petitioner

VERSUS

Raj Bhandari.

....Respondent

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. A. R. Takkar, Advocate,
for the petitioner.

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RANJIT SINGH, J.

The petitioner, ex-Director of M/s World Tex Ltd., Noida, District Gautam Budh Nagar (UP) seeks quashing of complaint titled 'Raj Bhandari Vs. M/s World Tex Ltd. and another' dated 11.3.1999 and the summoning order issued by Judicial Magistrate Ist Class, Ludhiana, dated 13.12.2000.

It is alleged that the petitioner issued a cheque bearing No.301454 dated 6.1.1999 for a sum of Rs.5 lacs drawn on Global Trust Bank Limited, Connaught Circus, New Delhi, against the payment of goods supplied. This cheque, when presented through Allahabad Bank, I.B.Court Road, Ludhiana, was returned unpaid with the remark "***second signature is not there on the cheque"*** Respondent issued notice to the petitioner under Section 138 of the Negotiable Instrument Act (hereinafter referred to as "the Act") and when the payment was not made, even thereafter the impugned complaint was filed in the

Court of Additional Chief Judicial Magistrate, Ludhiana, leading to summoning of the petitioner under Section 138 of the Act vide order dated 20.10.1999.

The petitioner initially had filed an application for recall o the summoning order, pleading that the cheque had not been dishonoured due to “insufficiency of funds”, which was declined by the Magistrate on 13.12.2000. The petitioner thereafter preferred revision against the said order, which, however, was subsequently withdrawn on the ground that such an approach was held not maintainable in view of the law laid down in ***Adalat Parshad Vs. Rooplal Jindal and others,*** (2004) 7 Supreme Court Cases 338. Liberty was sought to file the petition for quashing of the compliant under Section 482 Cr.P.C. That is how, the petitioner has filed the present petition.

Mr.A.R.Takkar, counsel appearing for the petitioner, has raised a solitary plea before me in support of his prayer for quashing the compliant and the summoning order. According to the counsel, the cheque had not been dishonoured on account of insufficiency of funds but was returned unpaid on the ground of structural defect as it had been signed only by one person but was required to be signed by two signatories. To justify this action of the petitioner, the counsel would say that it was in the knowledge of the respondent that said cheque was supposed to be signed by the Managing Director before it could be presented for realisation and was to be signed only once the respondent had completed his part of the contract i.e. if he had procured the expert quota for the petitioner. In short, the plea is that

this cheque was to be encashed on completion of the conditions afore-mentioned and it had been kept with the respondent just to create a sense of security. Mr.Takkar has referred to the case of ***Vinod Tanna and another Vs. Zaher Siddiqui and others,*** (2002) 7 Supreme Court Cases 541 in support of his submission that the cheque returned unpaid on account of structural defect would not attract liability under Section 138 of the Act. He also refers to ***Kusum Ingots & Alloys Ltd. Vs. Pennar Peterson Securities Ltd. and others,*** (2000) 2 Supreme Court Cases 745, to urge that only when the cheque is returned due to insufficiency of funds, it would attract the offence under Section 138 of the Act. In ***Vinod Tanna's case*** (supra), the cheque was not honoured on the ground that drawer's signature was incomplete. In this background, the Hon'ble Supreme Court has held that it will not attract Section 138 of the Act. It was not a case where cheque was required to be signed by two different signatories and one of them had not endorsed the signatures at the time of issuance of cheque. In the present case signatures present on the cheque are complete. The ratio of law laid down in ***Vinod Tanna's case*** (supra) is clearly not applicable to the facts of the present case. It is difficult to accept that a drawee would know, that a particular cheque for being valid, is required to be signed by two persons. Even if he is aware of such a requirement, this fact would have to be proved by leading evidence. Rather, this may tend to project the author of cheque in a poor light. It can well be urged that a cheque, which was required to be signed by two persons, was knowingly issued with one signature so that the drawer is either

deceived or misled. This may indeed give an indication of intention of the drawer to mis-lead or cheat. It is otherwise also hard to accept that a person would agree to accept a defective cheque for a sense of security. What sense of security would such a cheque give to drawee when he knows that it can not be presented or about which he is aware that when presented, it would not be honoured. Such a cheque in any view would not give any sense of security to the drawee if he knew at the time of its receipt that it is not a valid instrument and is not to be honoured when presented.

Even otherwise much water has flown since the decision of ***Vinod Tanna's case*** (supra). While deciding the case of ***Vinod Tanna's case*** (supra) Hon'ble Supreme Court found that High Court had erred in relying upon the case of ***Modi Cements Ltd. Vs. Kuchil Kumar Nandi,*** 1998 (2) RCR (Cri.) 77. ***Modi Cements Ltd.*** (supra) was decided on the basis of legal proposition enunciated in ***Electronics Trade and Technology Development Corporation Ltd. Vs. Indian Technologists and Engineers (Electronics) (P) Ltd.,*** 1996 (1) Recent Criminal Reports 592 and ***K.K.Sidharthan Vs. T.P.Praveena Chandran,*** 1996 (6) S.C.C. 369. K.K.Sidharthan's case (supra) was a case where post dated cheques were issued and the bank was instructed not to make payment. This fact was made known to the drawee who still presented the cheques. Under these circumstances, it was held that offence under Section 138 of the Act would not be made out. This observation in K.K.Sidharthan's case (supra) was made by making reference to some observations made in ***Electronics Trade and Technology Development Corporation***

Ltd.'s case (supra), which reads as under:-

> "After the cheque is issued to the payee or to the holder in due course and before it is presented for encashment, notice is issued to him not to presents the same for encashment and yet the payee or holder in due course present the cheque to the bank for payment and when it is returned on instruction, Section 138 does not get attracted."

It may need a notice that the decision rendered in ***Electronics Trade and Technology Development Corporation Ltd.'s case*** (supra) is over-ruled by the Hon'ble Supreme Court in ***Modi Cements Ltd.'s case (supra)***. This view is reiterated by the Hon'ble Supreme Court in ***Ashok Yeshwant Badave Vs. Surendra Madhavrao Nighojakar,*** 2001(2) RCR (Cri.) 165 (SC). In a latest decision reported as ***Goaplast (P) Ltd. Vs. Chico Ursula D'Souza and another,*** 2003 (2) RCR (Cri.) 131 (SC), the Hon'ble Supreme Court has reiterated the law laid down in Modi Cements Ltd. and Ashok Yeshwant Badave's cases (supra). Reference has also been made to Section 139 of the Act, which creates a presumption in favour of the holder of a cheque. It has, thus, to be presumed that a cheque is issued in a discharge of any debt or other liability. As observed by the Hon'ble Supreme Court, this presumption can be rebutted by adducing evidence and burden would be on a person who wants to rebut the same. The Supreme Court in the case of Goaplast (P) Ltd. (supra) went on to hold that a contrary view would render Section 138 a dead letter and will provide a handle to persons

trying to avoid payment under legal obligations undertaken by them through their own acts which in other words can be said to be taking advantage of one's own wrong. Once a cheque is issued by a drawer, a presumption under Section 139 must follow. This may be a rebutable presumption and can be so rebuted by leading evidence during course of trial. Such a plea to rebut presumption or plea that cheque was not to discharge liability or for security alone can not be determined while exercising jurisdiction under Section 482 Cr.P.C. In ***NEPC Micon Ltd. & Ors. Vs. Magma Leasing Ltd.,*** 1999 (2) RCR (Crl.) 648 (SC), the Hon'ble Supreme Court held that Section 138 of the Act would be attracted even in those cases where account was closed and the cheque was dis-honoured with such a remark. Thus Section 138 of the Negotiable Instruments Act has been given a rather wide interpretation. Following observations made by the Hon'ble Supreme Court in NEPC Micon's case would be of advantage to notice the sweep of Section 138 of Negotiable Instruments Act:-

> "Any interpretation which withdraws the life and blood of the provision and makes it ineffective and a dead letter, should be averted. It is the duty of the court to interpret the provision consistent with the legislative intent and purpose so as to suppress the mischief and advance the remedy."

The ratio of law culled in Kusum Ingots & Alloys Ltd.'s case (supra) was after relying on ***Electronics Trade and Technology Development Corporation Ltd.'s case (supra)***, which,

as noticed, has since been over-ruled. The impugned cheque issued by the petitioner can not be called a defective instrument. Rest of the averments, as advanced on behalf of the petitioner, would need to be proved by leading evidence and can not be gone into while exercising jurisdiction under Section 482 Cr.P.C. These assertions made otherwise also appear far-fetched. No case for interference as such is made out.

The petition is accordingly dismissed.

September 19,2007 **(RANJIT SINGH)**
khurmi **JUDGE**